

REMARKS

Claim 12 was rejected under 35 USC 101 for statutory double patenting and claims 1-43 were rejected based upon obvious type double patenting. Claim 12 has been amended herein and a proper terminal disclaimer will be provided if it is determined that obviousness type double patenting exists when the claims are indicated to be allowable.

Claims 11, 20, 32, and 42 were rejected under 35 USC 112, first paragraph. In particular, the Examiner asserts that the terminology "data-reader writer writes data to the data storage device" was not enabled or supported in the specification. This rejection is respectfully traversed. One of ordinary skill in the art is well aware of devices which can both read and write data in a variety of formats. The Examiner is reminded that the original claims form a basis of the disclosure and use of a well known technology and the claiming of such a technology in the context of an invention is adequately enabled.

Claims 34-37 and 39 were rejected under 35 USC 112, second paragraph. With respect to claim 34, the improper dependency has been corrected.

Claims 22-27 and 34-37 were rejected as "the structural features encompassed by the claims can't be determined." The Examiner further asserts that the claims "appear to be drawn toward functional subject matter." The basis for the Examiner's rejection is not clear. Even if the claims are directed to functional limitations, such limitations are explicitly permissible. MPEP 2173.05(g). Thus, the Examiner is requested to withdraw the rejection and examine the claims in their present form. If such a rejection is maintained, the Examiner is respectfully requested to provide an explicit statutory basis for such a requirement. With respect to claim 39, that claim has been cancelled.

The pending claims were rejected under 35 USC 103(a) as being unpatentable over primarily Lebensfeld et al. in view of Mathier et al., with Li et al, Wilde, Suda and Carver being cited as well.

In summary, the combination of Lebensfeld et al. and Mathieu et al. fails to teach an amusement device having a data reader operably coupled to the microprocessor to receive data from a data storage device handled by a user of the amusement device, wherein the data comprises enhancement data adapted to enhance a function of the amusement device. The Examiner notes that Lebensfeld et al. provide a detachable backpack having a circuit that could be programmed by an external computer. (Col. 9, lines 35-45). However, there is no teaching that a user operated data reader is provided; that a data storage device is provided with enhancement data to the user; that the user has the ability to modify the device (as opposed to a factory modification/preset) by using the data storage device; or that the functionality of the amusement device itself is modified by the user.

For certain dependent claims, the Examiner cites the Li et al reference as it teaches an audio player that receives a control card. This reference fails to provide the deficiencies noted above. First, Li et al. simply provides an audio player not an amusement device as claimed. Even if combined with the primary references, all that would result is a toy figurine that has audio capabilities. There is no teaching to provide a data reader that allows the user to adjust the capabilities of the device in any of the cited references. As such, the Examiner is respectfully requested to withdraw the rejections.

A petition for a one-month extension of time to respond (from January 30, 2003 – February 28, 2003) is enclosed herewith, along with a check in the amount of \$55 to cover the fee associated with the petition. The Office is also hereby authorized to charge any additional fees associated with this communication or the petition to Deposit Account 04-1420.

This application now stands in allowable form and reconsideration and allowance is respectfully requested.

Respectfully submitted,

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